IN THE

Supreme Court of the United States

October Term, 1965
No. 368

A book named "JOHN CLELAND'S MEMOIRS OF A WOMAN OF PLEASURE", G. P. PUTNAM'S SONS (Intervenor),

Appellant,

vs.

ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS,

Appellee.

On Appeal From the Supreme Judicial Court of Massachusetts.

Motion for Leave for Counsel for Amicus Curiae Citizens for Decent Literature, Inc., an Ohio Corporation to Participate in Oral Argument.

Citizens for Decent Literature Inc., an Ohio Corporation, has heretofore, pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, filed a motion for leave of court to file a brief amicus curiae in support of Appellee, which brief was attached to and filed concurrently with said motion.

Citizens for Decent Literature, Inc., respectfully moves at this time, pursuant to Rule 44.7 of said rules,

for special leave of Court for its Counsel to participate in oral argument, for the following reasons:

Both Appellant and Appellee, in their briefs herein, treat the Roth test as composed of three *independent* tests; namely, social value, prurient interest, and patent offensiveness. Our brief rejects this concept. In our view, the governmental purpose of obscenity legislation is to proscribe material whose predominant appeal is to prurient interest. The ascertainment of the nature of the "predominant appeal" of any given subject matter is accomplished through a "balancing" process in the Roth test, which considers and weighs both the social value factor and the prurient interest factor of the subject matter. We submit that prior case law and the American Law Institute, Model Penal Code recommendations support our interpretation.

In our view, neither Appellant nor Appellee give sufficient consideration to the governmental purpose for obscenity legislation, its historical development, and the significance of the appearance of "Fanny Hill" on the markets today, as factors to be weighed in the balance, in applying the Roth test.

We believe that oral argument on the above issues will provide assistance to this Court, not otherwise available.

Respectfully submitted,

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JAMES J. CLANCY,
RAY T. DREHER,
Counsel for Amicus Curiae.